

AMENDED IN ASSEMBLY MAY 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1038

Introduced by Assembly Member Negrete McLeod

February 20, 2003

An act to amend Sections 45207 and 88207 of, and to add Section 45120.2 to, the Education Code, relating to classified school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1038, as amended, Negrete McLeod. Classified school employees.

(1) Existing law requires the governing board of a school district to submit to the Superintendent of Public Instruction a local plan for the education of individuals with exceptional needs residing in the district on its own or in conjunction with one or more districts, or to join with the county office of education to submit a plan to the Superintendent of Public Instruction that assures access to special education and services for all individuals with exceptional needs residing in the geographic area served by the plan. Existing law requires the plan for special education to be developed and updated cooperatively by a committee of representatives of special *education* and regular teachers and administrators and with participation by parents, to ensure adequate and effective participation and communication.

This bill would set forth the employment rights of classified employees who are terminated, reassigned, or transferred, or become the employee of another employer as a result of the development or

revision of a local plan for the education of individuals with exceptional needs.

(2) Existing law authorizes a probationary or permanent classified school or community college employee to use up to 7 earned days of absence for illness or injury per school year in cases of personal necessity and requires the governing board of the school district or community college district to adopt rules and regulations requiring and prescribing the manner of proof of personal necessity.

This bill would prohibit the rules and regulations from requiring an employee to secure advance permission for personal necessity leave taken for the death of a member of his or her immediate family or accident involving the person or property of the employee or a member of his or her immediate family. The bill would authorize the use of more than 7 days of earned leave for illness or injury if so specified in an agreement between the exclusive representative of the employees and the school district *or, if there is no exclusive representative, the governing board adopts a policy allowing the use of more than 7 days of earned leave for personal necessity.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 45120.2 is added to the Education Code,
2 to read:
3 45120.2. (a) If the development or revision of a local plan for
4 the education of individuals with exceptional needs pursuant to
5 Chapter 2.5 (commencing with Section 56195) of Part 30, results
6 in a classified employee who is performing service for one
7 employer being terminated, reassigned, or transferred, or
8 becoming the employee of another employer because of the
9 reorganization of special education programs, the employee shall
10 retain the seniority acquired at his or her employment with the
11 school district or county office of education from which he or she
12 was terminated, reassigned, or transferred. If terminated, the
13 employee retains the rights specified in Sections 45115, 45117,
14 and 45119.
15 (b) The reassignment of an employee, transfer of an employee,
16 or new employment of an employee caused by the reorganization
17 of special education programs does not affect the seniority or



1 classification that a classified employee already attained in any
2 school district that undergoes the reorganization. The employee
3 has the same status with respect to his or her seniority or
4 classification, with the new employer, including time served as a
5 probationary employee. The total number of years served as a
6 classified employee with the former school district or county
7 office shall be credited, year for year, for placement on the salary
8 schedule of the new school district or county office.

9 (c) If a local plan for the education of individuals with
10 exceptional needs is developed or revised pursuant to Chapter 2.5
11 (commencing with Section 56195) of Part 30, all classified
12 employees shall be employed by a county office of education or
13 an individual school district.

14 (d) A classified employee who is reassigned or transferred as
15 a result of the reorganization of special education programs; has
16 priority, except as provided in subdivision (d), in being informed
17 of and in filling classified positions in the classifications in which
18 the employee was employed before the reassignment or transfer.
19 This priority expires 24 months after the date of reassignment or
20 transfer and may be waived by the employee during that time
21 period.

22 (e) A classified employee who served in a special education
23 program in a school district or county office and is terminated from
24 his or her employment by that school district or county office
25 pursuant to Section 45114 has first priority in being informed of
26 and in filling vacant classified positions for which the employee
27 is qualified or was employed, in any other county office or school
28 district that provides the same type of special education program.
29 Permanent employees have the first priority right to
30 reappointment as provided in this section for 39 months from the
31 date of termination. Probationary employees have the first priority
32 right to reappointment as provided in this section for 24 months
33 from the date of termination.

34 SEC. 2. Section 45207 of the Education Code is amended to
35 read:

36 45207. (a) A probationary or permanent employee may, at
37 his or her election, use any days of absence for illness or injury
38 earned pursuant to Section 45191 in cases of personal necessity,
39 including any of the following:

1 (1) Death of a member of his or her immediate family when
2 additional leave is required beyond that provided in Section 45194
3 and that provided, in addition thereto, as a right by the governing
4 board.

5 (2) Accident, involving his or her person or property, or the
6 person or property of a member of his or her immediate family.

7 (3) Appearance in any court or before any administrative
8 tribunal as a litigant, party, or witness under subpoena or any order
9 made with jurisdiction.

10 (4) Other reasons that the governing board may prescribe.

11 (b) The governing board of each school district shall adopt
12 rules and regulations requiring and prescribing the manner of
13 proof of personal necessity for the purpose of this section. The
14 adopted rules and regulations may not require an employee to
15 secure advance permission for leave taken for the purposes
16 specified in paragraphs (1) and (2) of subdivision (a). Earned leave
17 in excess of seven days may not be used in any school year for the
18 purposes enumerated in this section, ~~unless~~ *except if either of the*
19 *following conditions exist:*

20 (1) A maximum number of days in excess of seven is specified
21 for that purpose in an agreement between the exclusive
22 representative of the employees and the school district.

23 (2) *If there is no exclusive representative of the employees, the*
24 *governing board of the school district, by resolution, adopts a*
25 *policy allowing earned leave in excess of seven days to be used in*
26 *any school year for the purposes enumerated in this section.*

27 (c) Authorized necessity leave shall be deducted from sick
28 leave earned under the exemption of Section 45191.

29 (d) “Immediate family” has the same meaning as in Section
30 45194.

31 (e) This section applies to districts that have adopted the merit
32 system in the same manner and effect as if it were a part of Article
33 6 (commencing with Section 45240) and to school districts that
34 may be exempted from Section 45191.

35 SEC. 3. Section 88207 of the Education Code is amended to
36 read:

37 88207. (a) A contract or regular employee may, at the
38 employee’s election use any days of absence for illness or injury
39 earned pursuant to Section 88191 in cases of personal necessity,
40 including any of the following:

1 (1) Death of a member of the employee's immediate family
2 when additional leave is required beyond that provided both in
3 Section 88194 and as a right by the governing board.

4 (2) Accident involving the person or property of the employee
5 or of a member of his or her immediate family.

6 (3) Appearance in any court or before any administrative
7 tribunal as a litigant, party, or witness under subpoena or any order
8 made with jurisdiction.

9 (4) Any other reasons that the governing board may prescribe.

10 (b) The governing board of each community college district
11 shall adopt rules and regulations requiring and prescribing the
12 manner of proof of personal necessity for the purpose of this
13 section. The adopted rules and regulations may not require an
14 employee to secure advance permission for leave taken for the
15 purposes specified in paragraphs (1) and (2) of subdivision (a).
16 Earned leave in excess of seven days may not be used in any
17 college year for the purposes enumerated in this section, ~~unless a~~
18 *except if either of the following conditions exist:*

19 (1) A maximum number of days in excess of seven is specified
20 for that purpose in an agreement between the exclusive
21 representative of the employees and the ~~school district~~ *community*
22 *college district.*

23 (2) *If there is no exclusive representative of the employees, the*
24 *governing board of the community college district, by resolution,*
25 *adopts a policy allowing earned leave in excess of seven days to*
26 *be used in any school year for the purposes enumerated in this*
27 *section.*

28 (c) Authorized necessity leave shall be deducted from sick
29 leave earned under the exemption of Section 88191.

30 (d) For purposes of this section, "immediate family" has the
31 same meaning as in Section 88194.

32 (e) This section applies to districts that have adopted the merit
33 system in the same manner and effect as if it were a part of Article
34 3 (commencing with Section 88060) and to community college
35 districts that may be exempted from Section 88191.